

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

VAN A. LUPO,

Plaintiff,

V.

BANK OF AMERICA CORPORATION
and SHERYL LUPO,

Defendants.

Civil Action No. 04-40202-FDS
Hon. F. Dennis Saylor IV

Complaint Filed: September 29, 2004

JOINT MOTION TO DISMISS CLAIMS AND COUNTERCLAIMS
BY AND BETWEEN VAN A. LUPO AND BANK OF AMERICA AND CROSS-CLAIMS
BY BANK OF AMERICA AND SHERYL LUPO

The Plaintiff, Van A. Lupo, and the co-Defendant, Bank of America, hereby move this Court, pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, to grant this motion to dismiss claims and counter-claims by and between Van A. Lupo and Bank of America and cross-claims by Bank of America against Sheryl Lupo.

As grounds therefore, the Plaintiff, Van A. Lupo, and Defendant, Bank of America, state as follows:

General

1. The Defendant, Sheryl Lupo, while properly served and noticed, has failed to make an appearance in this case.
2. The co-Defendant, Sheryl Lupo, has been served with a copy of this Motion by first-class mail at the address appearing on the return of service against her in this matter.

**Counts I – VII Van A. Lupo v. Bank of America and
Counterclaims I – V Bank of America v. Van A. Lupo**

3. The Plaintiff, Van A. Lupo, and the Defendant, Bank of America, have made a satisfactory settlement of this matter and wish to voluntarily dismiss, with prejudice and without costs, any counts or claims one may have against the other, whether as plaintiff, defendant, plaintiff-in-counterclaim, defendant-in-counterclaim, plaintiff-in-cross-claim or defendant-in-cross-claim in the above entitled action. The Plaintiff, Van A. Lupo, and the Defendant, Bank of America, waive all rights to appeal.

Cross Claims I – V – Bank of America v. Sheryl Lupo

4. Bank of America's moves the Court to dismiss its cross-claims against its co-Defendant, Sheryl Lupo, without prejudice, Sheryl Lupo has not made an appearance in this case nor stipulated to the dismissal of Bank of America's cross-claims against her.

THE PLAINTIFF,

Van A. Lupo
By his attorney,
/s/ Jill C. Shedd
Jill C. Shedd (BBO #652488)
Law Office of Jill Shedd & Associates, P.C.
430 Franklin Village Drive, #212
Franklin, MA 02038
Tel.: (508) 720-9267

THE DEFENDANT,

Bank of America Corporation
By its attorney,
/s/ E. Macey Russell
E. Macey Russell (BBO #542371)
Choate, Hall & Stewart LLP
Two International Place
Boston, MA 02110
Tel.: (617) 248-5000

Dated: August 31, 2006

I, Jill C. Shedd, counsel for Van A. Lupo, hereby certify that E. Macey Russell, counsel for Bank of America, has agreed to the form and substance of this Joint Motion to Dismiss, and that Mr. Russell, via e-mail, has authorized me to submit this document electronically.

/s/ Jill C. Shedd
Jill C. Shedd

CERTIFICATE OF SERVICE

I, Jill C. Shedd, certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent via first-class mail to those indicated as non registered participants and upon Ms. Sheryl Lupo, 9081 Aloha Drive, Huntington Beach, CA 92646 on September 5, 2006.

/s/ Jill C. Shedd

Jill C. Shedd